

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

GARY BARTON, SR., as Administrator of the)	
Estate of MICHAEL L. BARTON, for the Sole)	
Purpose of Collecting Damages for Wrongful Death,)	
)	No. 3:13-cv-01159-JPG-PMF
Plaintiff,)	
)	
v.)	
)	
O'DANIEL TRUCKING COMPANY, INC.,)	
a corporation,)	
)	
Defendant.)	

COMPLAINT

NOW COMES the Plaintiff, GARY BARTON, SR., as Administrator of the Estate of MICHAEL L. BARTON (hereinafter referred to as "Plaintiff/Decedent"), for the Sole Purpose of Collecting Damages for Wrongful Death, by and through his attorneys, PAUL T. AUSTIN and JOSHUA M. BRADLEY, complaining of the Defendant, O'DANIEL TRUCKING COMPANY, INC., a corporation, and for his Complaint, states as follows:

1. The Plaintiff, GARY BARTON, SR., is a resident of Murphysboro, Jackson County, Illinois and is the Administrator of the Estate of Michael L. Barton, which was opened and designated as 82D07-1309-EM-00254, in the Vanderburgh Superior Court, Vanderburgh County, Indiana.

2. Plaintiff/Decedent, MICHAEL LYNN BARTON, was a resident of the City of Evansville, Indiana.

3. The Defendant, O'DANIEL TRUCKING COMPANY, INC., is a corporation doing business in Carmi, White County, State of Illinois.

4. The accident complained of occurred on August 29, 2013, in White County, Illinois, near the City of Carmi.

5. On August 29, 2013, Plaintiff/Decedent was driving and operating a motorcycle in a northerly direction near the City of Carmi, Illinois on Epworth Road near its intersection with County Road 1250 E.

6. At said time and place, ROBERT L. LEFFINGWELL, was the agent and employee of Defendant, O'DANIEL TRUCKING COMPANY, INC., and was driving a 1992 International dump truck owned by Defendant, O'DANIEL TRUCKING COMPANY, INC., in a southerly direction along Epworth Road near its intersection with County Road 1250 E near Carmi, Illinois.

7. At said time and place, ROBERT L. LEFFINGWELL, negligently drove his dump truck across the centerline of said highway into the front of Plaintiff/Decedent's motorcycle whereby Plaintiff/Decedent sustained personal injuries resulting in the death of Plaintiff/Decedent and Robert Leffingwell.

8. Defendant, O'DANIEL TRUCKING COMPANY, INC., acting through its agent and employee, ROBERT L. LEFFINGWELL, did then and there commit one or more of the following careless and negligent acts or omissions to act thereby proximately causing, in whole or in part, the injuries that resulted in the death of Plaintiff/Decedent as follows:

A) Failed to decrease the speed of said dump truck as necessary to avoid colliding with the motorcycle being driven by Plaintiff/Decedent and which was lawfully on the highway, contrary to the provisions of Chapter 625 ILCS Paragraph 11-601(A), Illinois Revised Statutes.

B) Negligently failed to keep safe lookout for other vehicles then and there rightfully on said highway contrary to the provisions of Chapter 625 ILCS Paragraph 11-601(A).

- C) Negligently failed to properly apply the brakes of said dump truck to avoid colliding with the front of the motorcycle being driven by the Plaintiff/Decedent.
- D) Negligently failed to keep said dump truck under control so as to avoid colliding with the front of the motorcycle being driven by Plaintiff/Decedent.
- E) Failed to keep the dump truck under proper control.
- F) Failed to turn the dump truck to the right, or left, so as to avoid a collision.
- G) Failed to drive upon the right half of the roadway, contrary to the provisions of 625 ILCS 5/11-701.
- H) Failed to pass an oncoming vehicle on the right, contrary to the provisions of 625 ILCS 5/11-702.
- I) Failed to operate said vehicle within a single lane and moved from that lane prior to ascertaining that such movement could be made safely, contrary with the provisions of 625 ILCS 5/11-709.

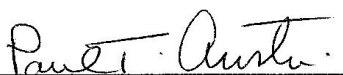
9. That as a direct and proximate result of one or more of the foregoing careless and negligent acts or omissions to act, the Plaintiff/Decedent was greatly injured in and about his body and extremities, both internally and externally, and sustained injuries to his central and peripheral nervous systems, resulting in his death.

WHEREFORE, the Plaintiff, GARY BARTON, SR., as Administrator of the Estate of MICHAEL L. BARTON, for the Sole Purpose of Collecting Damages for Wrongful Death, prays that Judgment be entered against the Defendant, O'DANIEL TRUCKING COMPANY, INC., in

such amounts as may be deemed fair and just compensation for his damages sustained herein,
plus costs of suit.


PLAINTIFF DEMANDS TRIAL BY A JURY OF SIX

Respectfully Submitted,

By: 
PAUL T. AUSTIN, #83062

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Respectfully Submitted,

By: 
JOSHUA M. BRADLEY, #6269452

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AFFIDAVIT IN ACCORDANCE WITH
SUPREME COURT RULE 222(b)

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

The undersigned, Paul Thomas Austin and Joshua M. Bradley, after being first duly sworn, upon our individual oaths hereby state that we are the attorneys for the Plaintiff herein and that the total damages sought in this cause exceed the sum of Fifty Thousand Dollars (\$50,000).

Further affiants sayeth not.


PAUL T. AUSTIN


STATE OF ILLINOIS)
)
COUNTY OF WILLIAMSON)

SUBSCRIBED and SWORN to before me a Notary Public, this 7th day of November, 2013.

My commission expires: 12/27/14


NOTARY PUBLIC




JOSHUA M. BRADLEY

STATE OF ILLINOIS)
)
COUNTY OF WILLIAMSON)

SUBSCRIBED and SWORN to before me a Notary Public, this 8th day of November, 2013.

My commission expires: 12/27/14


NOTARY PUBLIC

